IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.419 OF 1994

1. BALU LAXMAN JADHAV
@ DHUDUM BALYA
Age 23 years, Occ: Nil
residing at 1360,
Shukrawar Peth, Pune

2. GORAKH MARUTI SALUNKE,
Age 30 years, Occ: Rickshaw
Driver,
residing at Shindewadi
Tal. Bhor District - Pune.
(Both are in Central Prison
at yerwada, Pune) ...Appellants
(Original accused Nos.1
and 4)

V/s

1. State of Maharashtra
2. Anil Maruti Kshirsagar
Adult, residing at Survey
No. 132, Parvati Payatha,
Pune. ...Respondents.
(Respondent No.2 is the
original complainant)

Mr. Sunil Kadam for the appellant.

Mr. A.M. Shringarpure, APP for the respondent No.1 -
State.

Mr. Rajiv Mane, advocate for respondent No.2.

CORAM: V.M.KANADE,J.

DATE: 15th September, 2004

ORAL JUDGMENT:

1. Heard the learned Counsel appearing on behalf of the appellant and the leanred APP appearing on behalf of the respondent No.1 - State and the learned

advocate appearing on behalf of respondent No.2.

2. Respondent No.2. - Anil Maruti Kshirsagar is present in Court today. He has filed an affidavit in this Court and he was identified by his advocate. In the affidavit he has stated that both the accused and the comlainant have patched up their differences and are living peacefully and happily in the same Village and are also earning their livelihood by lawful means. He has further stated that he has no grievance against the appellant and has no intention to proceed against the appellants.

3. Appellants were acquitted by the Trial Court under sections 147, 148 of the Indian Penal Code. Accused, however, were convicted under section 307 of the Indian Penal Code and sentenced to suffer R.I. for five years and to pay fine of Rs 500/- each and in default to suffer R.I. for one year.

4. The learned Counsel appearing on behalf of the appellants has submitted that the complainant has filed his affidavit and has also personally appeared in the Court and has expressed his desire to withdraw the prosecution against the accused.

5. However, the conviction of the accused is under section 307 of the I.P.C. which is a non-compoundable offence. Hence, I cannot acquit the accused on the basis of the said compromise. The Apex Court in similar case in **Salim and Others Vs. State of M.P.** reported in **1995 Supp (4) SCC 631** has observed as under:-

> "We cannot acquit the accused persons on the basis of the compromise. However, as held by this Court in Ram Pujan and others vs. State of U.P. the fact that they have compromised the matter and have patched up their differences and the fact that since then they have been living together happily, has relevance so far as the question of sentence is concerned."

The Apex Court, after being satisfied about the genuineness of the compromise allowed the appeal and directed that the sentence should be altered to that already undergone.

6. In the present case also, the appellants have been convicted under section 307 of the Indian Penal

Code. The facts of the case cited hereinabove and the present case are identical. I am, therefore, inclined to pass the similar order so that hereinafter no untoward incident takes place and the appellants and witnesses live in peace and harmony in the Village. Simialr view also has been taken by this Court in the case of **Sarjerao Shamrao Dhas Vs. State of Maharashtra** reported in **2003 (2) Mh.L.J. 235.** In this view of the matter, the following order is passed:-

O R D E R

. Conviction is confirmed. However, sentence is reduced to that already undergone by the accused.

. Accused be released forthwith unless they are otherwise required in any other case. Bail bonds of the accused stand cancelled.

. Appeal is partly allowed in the above terms.

V.M.KANADE, J.